



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	18
<b>VAC Chapter Number:</b>	135
<b>Regulation Title:</b>	Real Estate Board Rules and Regulations
<b>Action Title:</b>	Amending
<b>Date:</b>	01/10/2002 Revised 07/10/2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The proposal makes general clarifying changes; imposes less burdensome requirements for reciprocal applicants; clarifies language regarding applicants with criminal convictions; revises language regarding the supervision of branch offices to focus on the actual supervision provided rather than the physical location of the office; adds clarifying language to the escrow provisions; revises the advertising provisions to incorporate internet advertising; and combines Parts V and VI, Standards of Practice and Conduct.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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Sections 54.1-2100, et seq. of the *Code of Virginia* require the licensure of real estate salespersons and brokers.

Section 54.1-2105 states that the Board “may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate necessary regulations.”

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The purpose of the proposal is to:

- Impose less burdensome requirements for reciprocal applicants by moving the requirement to pass the State portion of the examination from the qualification provisions to the renewal provisions. This will permit the license to be issued more expeditiously while still protecting public health, safety and welfare by relying on the applicant’s general knowledge from licensure in the original jurisdiction and further verifying specific knowledge prior to the first renewal.
- Clarify requirements for applicants with criminal convictions. This will permit the processing of such applications to occur on a more timely basis and still protect public health, safety and welfare by referring those convictions to the Board which require a decision in accordance with § 54.1-204 of the *Code of Virginia*.
- Revise language regarding the supervision of branch offices to focus on the actual supervision provided rather than the physical location of the office. Changing trends in the office resulting from increased use of technology have made the current provisions obsolete. The proposed provisions are designed to increase protection of public health, safety and welfare by increasing supervision of all licensees resulting in increased compliance with all regulations.
- Add clarifying language to the escrow provisions. The proposal contains more strict language clarifying that failure to maintain a balance in the escrow account sufficient to

account for all funds designated to be held by the firm is a violation of the Board's regulations. This will increase protection of public health, safety and welfare by giving the Board increased authority over violations regarding funds which belong to the consumer.

- Revise advertising provisions to incorporate internet advertising. The purpose of the proposal is to address changing trends in the industry and protects public health, safety and welfare by ensuring that all consumers have full disclosure in all advertising.
- Make clarifying changes that will result in easier administration and enforcement of the provisions. For example, Parts V and VI, Standards of Practice and Conduct have been combined.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

The proposal:

- makes general clarifying changes throughout the regulations;
- imposes less burdensome requirements for reciprocal applicants by deleting the requirement to pass the Virginia real estate license law and regulations portion of the examination upon licensure and requiring passage of the examination at the time of the first renewal (public protection is maintained because licensees have been practicing in other jurisdictions and have provided documentation regarding the status of their licenses, including any disciplinary action taken);
- clarifies language regarding applicants with criminal convictions which will enable individuals with minor convictions to obtain a license without the delay of Board review through the Administrative Process Act;
- revises language regarding the supervision of branch offices to focus on the actual supervision provided rather than the physical location of the office which increases public protection by specifying in detail the type of supervision required to ensure compliance with applicable laws and regulations;
- adds clarifying language to the escrow provisions (by adding language regarding the required balance in escrow accounts and the provision prohibiting the payment of commissions to licensees from the escrow account)
- adds language to the escrow provisions regarding the disbursement of escrow moneys in the event the transaction is not consummated (these provisions permit the individual to get funds due them in a more expedient manner while at the same time containing notice requirements to protect all parties)
- revises the advertising provisions for simplification purposes, to incorporate internet advertising that will provide increased public protection, and by adding specific disclosure requirements;
- combines Parts V and VI, Standards of Practice and Conduct.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

The advantages to the public and the Commonwealth resulting from the proposed regulation are to further protect consumers by:

- Imposing less burdensome requirements for reciprocal applicants which will decrease unlicensed activity thereby increasing public protection by bringing more individuals under the jurisdiction of the Board and the Real Estate Transaction Recovery Act (§§ 54.1-2112 et seq., *Code of Virginia*).
- Adding requirements regarding supervision of licensees working out of branch offices.
- Adding clarification to the requirements regarding funds belonging to the public which are held in escrow.
- Requiring increased disclosure in the advertising provisions to ensure the public is not harmed by on-line advertising.

No disadvantages to the public or the Commonwealth have been identified.

## Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

It is not anticipated that the proposed regulatory changes will have a fiscal impact on individuals, businesses, localities or other entities. The cost of implementation is limited to the printing and distribution of the final regulations which will be paid for from current fiscal year budgets with no added burden to agency resources.

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by*

*the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

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## **Part I, General.**

### 18 VAC 135-20-10. Definitions.

- A definition of “active” has been added for clarifying purposes; the term is used throughout the regulations.
- Language has been added to the definition of “actively engaged” to incorporate the statutory waiver language.
- Language has been added to the definition of “firm” to clarify the existing practice regarding fictitious names.
- The definition of “licensee” has been amended to provide consistency with the use of the term throughout the regulations.
- The definition of “principal to a transaction” has been amended for clarification and consistency with the provisions of the statute regarding agency law (§ 54.1-2130 et seq.).
- The definition of “supervising broker” has been amended for clarifying purposes and to add reference to agency law (§ 54.1-2130 et seq.).

## **Part II, Entry**

### 18 VAC 135-20-20. Necessity for license.

Subsection B has been amended to:

- Change “brokerage firm” to “firm” for consistency with other sections of the regulations.
- Move language regarding address changes and the authorization for the entity to do business in Virginia from Subsections B 1-5 to Subsection B.
- Delete the requirement for partnerships, associations, corporations and limited liability companies to provide information regarding partners, owners and officers because the information is not currently maintained and not required for enforcement purposes because the principal broker is responsible for compliance with the regulations and other information can be obtained from the State Corporation Commission database.
- To change the term “branch office” to “place of business” for consistency with Section 18 VAC 135-20-160.

### 18 VAC 135-20-30. Qualifications for Licensure.

- Subsection 4 has been amended to eliminate certain criminal convictions (misdemeanor convictions for drunk in public, driving under the influence, traffic violations, and misdemeanor convictions that occurred five or more years prior to the date of application with no subsequent convictions) from those convictions that require Board review prior to the issuance of a license.
- Subsection 6 has been amended for clarification purposes.
- Subsection 7 has been amended to give the Board the discretion to approve an applicant who has not complied with the procedures established with regard to conduct at the examination if such approval is justified by the facts and the issuance of the license will not harm public health, safety and welfare.

18 VAC 135-20-40. Additional qualifications for brokers.

- Subsection 2 has been amended to incorporate the statutory waiver language.

18 VAC 135-20-45. Additional qualifications for salesperson's or associate broker's license as a business entity.

- Subsection 1 and 2 have been amended for clarification purposes and consistency with statute (§ 54.1-2106.1).
- Subsections 3 through 6 have been amended to delete the requirement for partnerships, associations, corporations and limited liability companies to provide information regarding partners, owners and officers because the information is not currently maintained and not required for enforcement purposes because the principal broker is responsible for compliance with the regulations and other information can be obtained from the State Corporation Commission database.
- Subsection 5.b. has been amended for clarification purposes and consistency with 18 VAC 135-20-20 B.

18 VAC 135-20-50. Concurrent licenses.

- This section has been amended for clarification purposes and consistency with the Definitions section.

18 VAC 135-20-60. Qualifications for licensure by reciprocity.

- Subsection A has been deleted because is duplicative and unnecessary.
- Subsection B.3 has been amended to delete the requirement for reciprocal applicants to pass the Virginia real estate license law and regulations portion of the examination (18 VAC 135-20-105 has been added to require reciprocal licensees to pass the examination prior to their first renewal).
- Subsection B.4 has been amended to give the Board the discretion to approve an applicant who has not complied with the procedures established with regard to conduct at the examination if such approval is justified by the facts and the issuance of the license will not harm public health, safety and welfare (consistent with changes to 18 VAC 135-20-30 7).
- Subsection B.6 has been amended for clarification (language moved from Subsection D) and to incorporate the statutory waiver language (consistent with changes to 18 VAC 135-20-40 2).
- Subsection B.8 has been amended to eliminate certain criminal convictions (misdemeanor convictions for drunk in public, driving under the influence, traffic violations, and misdemeanor convictions that occurred five or more years prior to the date of application with no subsequent convictions) from those convictions that require Board review prior to the issuance of a license (consistent with changes to 18 VAC 135-20-30 4).
- Subsections C and D were deleted because the language has been incorporated in Subsection B.6.

18 VAC 135-20-70. Activation or transfer of license.

Subsection B has been amended for clarification purposes.

- Subsection B was added to incorporate current practice of requiring an application (existing fee provided for in 18 VAC 135-20-80).

18 VAC 135-20-80. Fees

Subsection A has been amended to:

- Clarify the name of the business entity license.
- Delete the bad check penalty, this is an administrative fee charged by the Department of Professional and Occupational Regulation for all programs, it is not required to be regulation.

### **Part III, Renewal of License**

18 VAC 135-20-100

- Subsections 2 and 3 have been amended to delete reference to requirements in place prior to January 1, 1999, they are no longer applicable; and to add “common interest ownership” as an acceptable topic for continuing education.
- Subsection B was deleted because 18 VAC 135-20-130 permits the board to deny renewal of a license for the same reasons it may refuse initial licensure.
- Subsection C was deleted from this Section and moved to 18 VAC 135-20-130.

18 VAC 135-20-105. Additional qualifications for renewal of a reciprocal license.

- This section was added to require reciprocal licensees to pass an examination on Virginia real estate license law and regulations prior to the first renewal (this requirement was deleted from the requirements for initial licensure in 18 VAC 135-20-60).

18 VAC 135-20-110. Procedures for Renewal

- Subsection A was deleted because most of the subsection outlines Board procedures and is not required to be in regulation; the last sentence regarding failure to receive renewal notices was moved to Subsection B.
- Subsection B, language regarding failure to receive renewal notices was moved from Subsection A.

18 VAC 135-20-130. Board discretion to deny renewal.

- Language was added to this section from 18 VAC 135-20-100 C.

### **Part IV, Reinstatement**

18 VAC 135-20-150. Board discretion to deny reinstatement.

- This section was amended to combine Subsections A and B and for consistency with 18 VAC 135-20-130 regarding renewal.

### **Part V, Standards of Practice and Conduct**

Part V, Standards of Practice and Part VI, Standards of Conduct have been combined.

18 VAC 135-20-155. Grounds for disciplinary action.

- All provisions were moved to this section from Sections 18 VAC 135-20-200 and 18 VAC 135-20-230.

18 VAC 135-20-160. Place of business.

- Subsection C, this language was moved from Subsection E.
- Subsection D was amended to relate supervision of branch offices to the licensees assigned to the branch rather than the physical location of the branch and to delete language regarding display of signs which was moved in part to 18 VAC 135-20-190 E 3.
- Subsection E was deleted, language was moved to Subsection C.
- Subsection F was deleted, language was moved to 18 VAC 135-20-170 A 3.

18 VAC 135-20-170. Maintenance of licenses

- Subsections A 1 and 2 were amended for clarification purposes.
- Subsection A 3 was amended to add language deleted from 18 VAC 135-20-20 B 1-5 and 18 VAC 135-20-160 F.
- Subsection B was amended for clarification purposes and to distinguish between the principal broker and other licensees.
- Subsection E was deleted, portions of the language were moved to 18 VAC 135-20-70, the remaining language either outlines Board procedures or is duplicative and is not necessary.

18 VAC 135-20-180. Maintenance and management of escrow accounts.

- Provisions relating to maintenance of financial records have been deleted from this section and moved to a new section 18 VAC 135-20-185, Maintenance and management of financial records.
- Subsection A 1 has been amended to clarify the existing requirement for the balance in escrow accounts to be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship.
- Subsection A 2 was amended for clarification purposes.
- Subsection B.1.a. was amended to provide a less burdensome way for the licensee to release escrow money when a contract is not consummated and adds additional notice requirements to protect the public.
- Subsections B1.b. and c were amended for clarification purposes.
- Subsection C 1-3 was added by moving language from 18 VAC 135-320 4 through 6.
- Subsection C 4 was added for consistency with 18 VAC 135-20-180 A 1.
- Subsection C 5 was added to further protect the public by increased reporting requirements for escrow violations.

18 VAC 135-20-185. Maintenance and management of financial records.

- This section was added to incorporate provisions from 18 VAC 135-20-180 regarding financial records.
- Subsection A was amended to permit firms to keep their original records at an office outside of Virginia as long as a copy is maintained in Virginia. Many firms have their main office outside Virginia and a branch office in Virginia.
- Subsection B was amended for clarification purposes.
- Subsection C was added by moving language from 18 VAC 135-20-320 1 through 3 and the last portion of C.1 was amended to add “unless prohibited by law” because the settlement statement is not always provided since the enact of the Gramm-Leach-Bliley Act of 1999 regarding privacy issues.

18 VAC 135-20-190. Advertising by licensees.

- The relevant portions of the first paragraph were moved to Subsection E, other portions were deleted for consistency with other amendments that distinguish only between on-line advertising and other advertising without reference to signs, newspapers, publications, etc.
- Subsection A, definition of “advertising” was amended to simplify existing language.
- Subsection A, definition of “disclosure” was added to provisions for on-line advertising and to further protect the public by providing additional disclosure requirements.
- Subsection A, definition of “institutional advertising” amended to delete reference to licensees and service marks to further distinguish institutional advertising from other advertising.
- Subsection A, definition of “viewable page” was added in relation to on-line advertising.
- Subsection B was amended to achieve consistency with the definitions section and other advertising changes.
- Subsection C was deleted and moved to Subsection E.
- Subsection D, existing language was deleted consistent with other advertising changes regarding service marks and institutional advertising and new language was added to provide for on-line advertising.
- Subsection E, paragraphs 1 through 3 were moved from the first paragraph of the section; paragraph 4 was moved from 18 VAC 135-20-290 Subsections 2 and 3; and paragraph 5 was added to reflect the current business practices of many multiple listing services.

18 VAC 135-20-200. Grounds for disciplinary action.

- This section was deleted and existing language was moved to 18 VAC 135-20-155.

18 VAC 135-20-220. Disclosure of brokerage relationships.

- Subsections A 3 and 4 were amended for clarification purposes.
- Subsection A 5 was deleted, it is no longer necessary because other disclosure provisions meet the requirements of §§ 54.1-2130 et seq. of the *Code of Virginia*.

18 VAC 135-20-230. Licensees dealing on own account

- This provision was deleted and existing language was moved to 18 VAC 135-20-155.

18 VAC 135 20-240. Provision of records to the board.

18 VAC 135-20-250. Response to inquiry of the board.

- These sections were amended to distinguish between the types of inquiries and requests.

18 VAC 135-20-260. Unworthiness and incompetence.

- Subsection 5 was amended for consistency with changes made to entry requirements in 18 VAC 135-20-30 4 and 18 VAC 135-20-60 7.
- Subsection 6 was amended for consistency with Subsection 5.
- Subsections 7 and 8 were added to permit the board to discipline a licensee who has been the subject of disciplinary action in another jurisdiction. These provisions are currently contained in the entry requirements in 18 VAC 135-20-30 3 and 8 and 18 VAC 135-20-60 5 and 9.

18 VAC 135-20-270. Conflict of Interests

- Subsections 1 and 2 were amended for clarification purposes

## 18 VAC 135-20-280. Improper brokerage commission

- Subsection 2 was amended to incorporate changes in the industry regarding the provision of additional services by licensees relating to other aspects of the transaction or property (i.e. mortgage services, property repair and maintenance services).

## 18 VAC 135-20-290. Improper dealing.

- Subsection 1 was amended to provide more options to the client regarding termination of the relationship, public protection is maintained by continuing a requirement for termination language.

## 18 VAC 135-20-300. Misrepresentation/omission

- Subsection 9 was amended for consistency with Virginia case law .

## 18 VAC 135-20-320. Record keeping and escrow funds

- All provisions were deleted and moved to 18 VAC 135-20-180 C 1 through 3 and 18 VAC 135-20-185 C 1 through 3.

## 18 VAC 135-20-330. Principal and supervising broker's responsibility for acts of licensees and employees.

- Language was added to protect the broker from disciplinary action if he takes reasonable action to remedy a situation involving unlawful acts and violations by subordinate licensees, this ties in with the language regarding reporting requirements contained in 18 VAC 135-20-180 C 5 which provide additional public protection.

**Part VI. Schools.**

## 18 VAC 135-20-360. Proprietary school standards, instructor qualifications and course requirements.

- Subsection B 3 was amended for clarification purposes.

## 18 VAC 135-20-370. Fees.

- Subsection G was amended to clarify that the Board can deny renewal for the same reasons it may deny initial approval and to delete language regarding a hearing to permit an Informal Fact Finding Conference in accordance with the Administrative Process Act in lieu of proceeding to a Formal Hearing.

## 18 VAC 135-20-410. Broker Courses.

- Subsection C was amended for clarification purposes.

**Alternatives**

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

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Failure to adopt the proposed changes will result in: 1) the regulations not being as clear as possible and increased noncompliance; 2) failure to add increased public protection provisions; and 3) failure to remove burdensome requirements that do not relate to public protection.

### Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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No comments were received during the NOIRA comment period.

### Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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The purpose of many of the changes is to improve clarity in the regulations. The agency believes these changes will achieve clarity.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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The Real Estate Board will enter into the regulatory review process three years following the date of the final regulations in accordance with Executive Order No. 25. The review will be conducted to determine if the regulations should be continued, amended, or terminated, including a description of specific and measurable goals the regulations are intended to achieve.

### Family Impact Statement

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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It is anticipated that the proposed regulatory changes will have no impact on families.